

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 20, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Nancy Fritz (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB277, SB292, SB298, SB327,
3/16/2001
Executive Action: SB314, HB357, SB373, SB277

HEARING ON SB327

Sponsor: SEN. STEVE DOHERTY, SD34, GREAT FALLS

Proponents: Riley Johnson, NFIB
Jeff Brandt, Department of Administration
Frederic Weber, self
REP. AUBYN CURTISS, HD81, LINCOLN COUNTY
Matthew Lawrence, self
Rick Vogel, self

Opponents: REP. EILEEN CARNEY, HD82, LINCOLN COUNTY

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD34, GREAT FALLS, said the act restricts agency and political subdivision competition with private internet service providers. The agency or government entity can provide this service if no private service is available.

Proponents' Testimony:

Mr. Vogel, Mr. Johnson and REP. CURTISS spoke for the bill and REP. CURTISS offered some amendments.

Mr. Brandt said he felt the bill would serve its purpose without interfering with the service provided.

Mr. Weber said he was in favor of the bill because he was in competition with the government. He said Lincoln County actually tried to discourage him from becoming a heavy competitor.

EXHIBIT (buh63a01)

Mr. Lawrence said his friends had been trying to run their business in competition with Lincoln County and it was nearly impossible.

{Tape : 1; Side : A; Approx. Time Counter : 10.6}

Opponents' Testimony:

REP. CARNEY said she would tell the other half of the story. She said Lincoln County was a pretty isolated area with an antiquated phone system. She said a group of citizens formed an economic development company to provide the internet for all of Lincoln. They had 2400 customers, and the voluntary board did all the work, including setting the internet up in the schools. She said it ran more like a co-op and all the funds were put back into it.

Now that access is provided other people want to take over. She urged the committee to put an amendment on the bill or to kill it.

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. DOHERTY asked the committee to respect the intent of the bill and said it was about more than Lincoln County

{Tape : 1; Side : A; Approx. Time Counter : 19.5}

HEARING ON SB292

Sponsor: SEN. MIKE SPRAGUE, SD6, BILLINGS

Proponents: Jerry Lyford, plumber, Kalispell
Carl Schweitzer, APHC
Michael Lange, Billings
Jo Hawkins, Helena
Rhonda Carpenter, Great Falls
Bob Mack, Master Plumbers

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE SPRAGUE, SD6, BILLINGS, said the Yellow Pages do not police their advertisements, but the question is should people be allowed to advertise in the plumbing section if they are not a plumber. This bill lets individuals know they must be a plumber if they advertise as one.

Proponents' Testimony:

Mr. Lyford said the Yellow Pages are where many people find their plumbers. Often they hire those with the biggest ad and later a qualified plumber is required to solve the problem they create. He said the Board of Plumbers has a hard time getting the unqualified ones to stop doing work. He said if the ads weren't there, they wouldn't have the problem to begin with. He also said he could not support drain cleaners as plumbers because they were not, and these ads are often found in the plumbing section.

Mr. Schweitzer said he supported the bill. He said it established general rules for licensing and that non-plumbers cannot use the term "plumber" in their ads.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Mr. Lange said truth in advertising is the main core of the bill.

Ms. Hawkins presented written testimony.

EXHIBIT (buh63a02) EXHIBIT (buh63a03)

Mr. Mack said it took nine years of training to become a master plumber, and sewer and drain people don't have this and they shouldn't advertise in the plumbing section.

Opponents' Testimony:

Ms. Carpenter said when people have water problems they turn to the plumbing section of the phone book and they will call who they think they need. She said to advertize in the Yellow Pages requires planning and these are not fly-by-night businesses. She said if the proponents would accept the amendment which she had brought them from the electrical code, she would endorse the bill.

Questions from Committee Members and Responses:

REP. GALLIK asked **Ms. Carpenter** why their ad read "faucet and toilet repair" since they were not plumbers. She replied the code allowed for this type of work to be performed by them.

REP. LAIBLE asked **Mr. Lyford** if they had ever brought charges for false advertising. He said they had not because they did not feel like they would get anywhere. He said there were only two license inspectors for the whole state and catching people was difficult.

REP. LAIBLE asked if he ever got complaints on a licensed plumber. **Mr. Lyford** said they got a few, but most complaints were in regard to non-licensed people.

Closing by Sponsor:

SEN. SPRAGUE said it was true that people looked under the plumbing section for a plumber or plumbing. He thought the drain cleaners had a reasonable request.

{Tape : 1; Side : A; Approx. Time Counter : 3}

HEARING ON SB277

Sponsor: SEN. DEBBIE SHEA, SD18, BUTTE

Proponents: Carl Schweitzer, APHC
Jerry Lyford, State Plumbing Board
Jo Hawkins, Board of Plumbers
Bob Mack, Department of Commerce

Opponents: Michael Lange, self
Harold Blatti, Stillwater County

Opening Statement by Sponsor:

SEN. DEBBIE SHEA, SD18, BUTTE, said this bill requested a task force regarding homeowners doing their own work. She said for public health and safety, when the homeowner does their own work, it should be inspected to insure it is done right. She said it would not require an inspection for water heater replacement, faucet and toilet repair.

Proponents' Testimony:

Mr. Schweitzer said he had asked the bill be drafted after a committee looked at the codes to determine what was needed. He said this is done in Helena now, but the bill would make it apply to the rest of the state.

{Tape : 1; Side : A; Approx. Time Counter : 8}

Mr. Lyford passed around to the committee a set of pictures which showed how walls could cover up bad work.

Ms. Hawkins said this bill would create accountability. She said homes turn over once every 4 years and this will protect future owners. She said it still allows the homeowner to perform the work, but it increases safety.

Mr. Mack said the bill would protect future owners of homes which people live in for a year and fix up to sale. Also, he mentioned the bad effect sewer gas can have on people, and said this bill will increase safety.

Mr. Jellison said he supported and appreciated SEN. SHEA's efforts.

Opponents' Testimony:

Mr. Lange said he had run for a legislative district. He said he felt by passing this bill the committee would be increasing the size of government and fees. He said the bill would benefit a few plumbing contractors and take away the rights of taxpayers. He told the committee that education was a better tool. He said, "We do need a big bureaucracy, we need common sense and education."

Mr. Blatti said he appreciated the concern for public health and safety, but had other questions like "how long would you have to wait for an inspector." He said he knew of a business which had waited four weeks and was still waiting. He said he thought this bill was "a foot in the door to further intrude into our lives." He said if the committee would "look into their hearts, they would see this bill was not the thing to do."

Questions from Committee Members and Responses:

REP. WHITAKER said there was an exemption for drain fields, what about lawn sprinklers. **Mr. Jellison** said lawn sprinklers are considered non-potable water, and would not be covered.

{Tape : 2; Side : B; Approx. Time Counter : 0}

REP. BROWN said to **Mr. Jellison** this bill is about protecting public safety, "How do we know it is in danger?" **Mr. Jellison** said they get complaints from subsequent home buyers, typically who are headed to court.

Closing by Sponsor:

SEN. SHEA said the bill does not require the homeowner to be a licensed plumber, it requires an inspection. "This will insure that subsequent owners have received a safety inspection," she said.

HEARING ON SB298

Sponsor: SEN. BILL GLASER, SD8, BILLINGS

Proponents: Carl Schweitzer, Sub-Contractors Assn.
Jim Wolfe, Polar Electric, Helena
Jack McCleary, Action Electric, Billings
Dennis Iverson, NECA
Jerry Lyford, Master Plumbing, Kalispell
Bob Mack, Master Plumbing, Whitefish

Opponents: Tom Ebsery, MCA, Billings
Robert Throssell, Montana Technical Council
Jeff Feiss, Montana Telecom

Opening Statement by Sponsor:

SEN. BILL GLASER, SD8, BILLINGS, said the bill limited the amount of retainage to no more than 5% except for residential projects less than \$200,000. He said the bill does less in its current form that originally was intended.

Proponents' Testimony:

Mr. Schweitzer said he had asked **SEN. GLASER** to carry the bill. He noted the bill copycats what this legislature did before for public construction, and there have been no problems with that. He said this would limit the negotiating power because some contractors use the retainage to get the work. He asked the committee to not punish everybody because of these bad apples. He said this bill will get the best people on the project at the best price.

Opponents' Testimony:

Mr. Wolf called it a good bill and said if it was good enough for the state it was good enough for private contracts.

Mr. McCleary testified that he had \$200,000 in outstanding retainage at the present.

Mr. Iverson said the small businesses should not be expected to bankroll projects.

Mr. Lyford said a 5% retainage is a reasonable amount and two years is way too long to hang on to money once the work is done.

Mr. Mack said he supported the bill.

Opponents Testimony:

Mr. Ebsery said he opposed the bill for several reasons. He did not think the legislature should be trying to solve issues which involved contractual relationships between parties. He objected to the 5% because he said the difference in private and state jobs were no bonds were required for private and the 10% retainage offset this. He also questioned why the residential construction should be limited to \$200,000. He said if the bill moved forward the 5% should be changed to 10% to make up for the

bonding issue. He asked the committee to table the bill.

EXHIBIT (buh63a04)

Mr. Throssell said the purpose of retainage is to see that the job gets done.

Mr. Feiss said the retainage terms vary from 5-10% depending on the type of work and it has the potential of conflict with federal contracts.

Questions from Committee Members and Responses:

REP. LAIBLE asked **Mr. Ebsery** what the accepted retainage rate was. **Mr. Ebsery** said 10%. **REP. LAIBLE** asked if the state has gone to 5% because they require bonding in case of default, and could they amend the bill to require a bond if the rate went to 5%. **Mr. Ebsery** said no, but a contract could require that and that he didn't believe every subcontractor was on a state required bond. **REP. LAIBLE** said if there was trouble with a sub-contractor, they shouldn't use them, and if there was trouble with a general contractor, they shouldn't pay them. **Mr. Ebsery** said is was a small state and there were not always a lot of options.

REP. BROWN said 16 years ago he bought his home and he had it remodeled under a 20% retainage contract. He said he found out the general contractor hadn't paid the subs, and he was able to pay them with the retainage. He said with this bill he wouldn't have been able to do that.

Closing by Sponsor:

SEN. GLASER said he did a project once that he didn't get paid for three years. He said the owner not only retained the 10%, but the last month's work. He said traditionally, 5% has been all that was needed. He concluded if he didn't think this was a problem, he wouldn't be carrying this bill.

EXECUTIVE ACTION ON SB314

Motion: **REP. GALVIN-HALCRO** moved that **SB314 BE CONCURRED IN.**

Discussion:

Motion: **REP. MATTHEWS** moved that **SB314 BE AMENDED.**

Discussion:

REP. MATTHEWS said the Vets in his area asked him to move this amendment.

Mr. Higgins said the amendment was introduced in the hearing and has a technical change that insures it only applies in the state, and gives the board the ability to adopt rules for storage and handling of drugs.

REP. LAIBLE asked **REP. MATTHEWS** if he had discussed the amendment with the sponsor. **REP. MATTHEWS** said before the bill was introduced, he had given him the Miles City Amendment.

REP. WHITAKER asked if the Great Falls Vets liked this amendment.

REP. MATTHEWS said he talked to Stuart Doggett and he thought he was in favor.

CHAIRMAN MCKENNEY said he would support the amendment because these were powerful drugs and he felt rule-making was the appropriate place for these matters.

{Tape : 3; Side : A; Approx. Time Counter : 0}

Vote: Motion **carried unanimously.**

Motion: **REP. MATTHEWS** moved that **SB314 BE CONCURRED IN AS AMENDED.**

Discussion:

CHAIRMAN MCKENNEY said a witness had testified that the Sheriff was against this bill, but the Sheriff in Great Falls told him he was neither for or against the bill, and had no opinion.

REP. GALLIK said with the Matthews amendment the major concerns of the opponents have been taken out and the bill now makes good sense.

Vote: Motion **carried 14-5 with Fritz, Gallik, Lawson, Musgrove, and Steinbeisser voting no.**

{Tape : 3; Side : A; Approx. Time Counter : 19.8}

EXECUTIVE ACTION ON HB357

Motion: REP. LAIBLE moved that HB357 DO PASS.

Discussion:

Motion: REP. MATTHEWS moved that HB357 BE AMENDED.

Discussion:

Mr. Higgins said this amendment removes the provision dealing with the gaming tax distribution and replaces it with an appropriation for the biennium general fund.

REP. FUCHS asked the committee to just move the bill along and to let the conference committee discuss the funding.

Vote: Motion carried 15-4 with Fritz, Lawson, McKenney, and Musgrove voting no.

Motion: REP. MATTHEWS moved that HB357 BE PASSED AS AMENDED.

Discussion:

Motion: REP. LAIBLE moved that HB357 BE AMENDED.

Discussion:

Mr. Higgins said the amendment removes "gaming tax" and replaces it with "money appropriated in the 2000 Special Session to the Department of Agriculture Program up to \$386,000." It would use of money which was not spent by the Ag Council and the Growth through Agriculture Program, he said. This would be used for the purposes of promoting horse racing until June 30, 2005.

{Tape : 3; Side : B; Approx. Time Counter : 0}

REP. LAWSON asked what would happen to the money of it was not spent for this.

Mr. Higgins said it would revert back to the General Fund.

REP. BOOKOUT-REINICKE asked if this passed would they be adding \$386,000 to the \$250,000 they just passed.

Mr. Higgins said yes.

REP. GALLIK said he could think of a better use for the dollars.

REP. STEINBEISSER said he was against the amendment because the money was not intended for horse racing. The money was intended for value-added products, he said, and it would be wrong to put it in horse racing.

REP. MATTHEWS asked **REP. FUCHS** what the Department of Agriculture said.

REP. FUCHS said **Director Peck** is "not thrilled." He added that another bill was moving horse racing to a different department and he didn't know where it would be.

REP. LAIBLE said he supported the amendment because the money was earmarked for agriculture and this would be better than putting it back in the General Fund. He said he thought the money spent on horse racing could create jobs and noted it had been successful in Kentucky. He said maybe they should tie a sunset to it.

Vote: Motion carried 11-8 with Brown, Fritz, Gallik, Juneau, Keane, Lawson, Musgrove, and Steinbeisser voting no.

Motion: **REP. LAIBLE** moved that **HB357 BE AMENDED.**

Discussion:

Mr. Higgins said this amendment calls for an additional prize if the race is won by a Montana-bred horse.

REP. GALVIN-HALCRO wanted to know how many times a day this extra could be won.

REP. FUCHS said there was about only one per day.

Vote: Motion carried 14-5 with Fritz, Gallik, Lawson, Musgrove, and Steinbeisser voting no.

Motion: **REP. LAIBLE** moved that **HB357 BE PASSED AS AMENDED.**

Discussion:

REP. GALLIK said he was concerned about the bill since they had cut education and now were giving horse racing so much.

REP. STEINBEISSER said they had a hard time getting that money for agriculture and he was not for taking it away. He said he opposed the bill.

REP. LAIBLE said this was a way to put money back into the economy and it would add to the community and the county fairs.

Vote: Motion carried 12-7 with Fritz, Gallik, Juneau, Keane, Lawson, Musgrove, and Steinbeisser voting no.

EXECUTIVE ACTION ON SB273

Motion: REP. LAIBLE moved that SB373 BE CONCURRED IN.

Discussion:

REP. BROWN said Ms. Lenmark gave an amendment, and asked if anyone was going to propose it.

REP. PRICE remarked that she said she would be back if she wanted it.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB277

Motion: REP. LAIBLE moved that SB277 BE CONCURRED IN.

Discussion:

REP. LAIBLE said he opposed this bill because it put more taxes and regulations on the homeowners. He aid the bill is unnecessary and creates jobs for the department. He noted it was brought at the request of the plumbing industry.

Vote: Motion failed 9-10 with Bitney, Fritz, Galvin-Halcro, Juneau, Keane, Lawson, Matthews, Musgrove, and Tramelli voting aye.

Motion/Vote: REP. LAIBLE moved that SB277 BE TABLED. Motion carried 10-9 with Bitney, Fritz, Galvin-Halcro, Juneau, Keane, Lawson, Musgrove, and Tramelli voting no.

ADJOURNMENT

Adjournment: 11:15 A.M.

REP. JOE MCKENNEY, Chairman

JANE NOFSINGER, Secretary

JM/JN

EXHIBIT (buh63aad)